

CITY OF SAN JOSÉ, CALIFORNIA
Redevelopment Agency of the City of San Jose
50 W. San Fernando Street, Suite 1100
San José, California 95110

STAFF REPORT

Hearing Date/Agenda Number
PC Agenda: 11-5-03 Item: 3.b.

File Number
RCP03-028

Application Type
Conditional Use Permit

Council District
3

Planning Area
Downtown Core

Assessor's Parcel Number(s)
259-41-088

PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 170 South Market Street

Gross Acreage: 0.20

Net Acreage: N/A

Net Density: n/a

Existing Zoning: CG

Existing Use: Vacant commercial space

Proposed Zoning: n/a

Proposed Use: Restaurant with after-midnight use and live entertainment

GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation
Core Area

Project Conformance: ☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Commercial Restaurant, Fairmont Hotel

CG (Commercial General)

East: Fairmont Hotel

CG (Commercial General)

South: Commercial Office, Residential

CG (Commercial General)

West: Cesar Chavez Park

CG (Commercial General)

ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete April 27, 1999
☐ Negative Declaration circulated on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

HISTORIC STATUS: Contributor to National Register District

Completed by: AG

REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date: 10-28-03

Approved by: _____

Approved by: _____
☐ Action ☐ Recommendation

APPLICANT

OWNER

Bill Martindale
McCormick and Schmick
720 Southwest Washington Street, Suite 550
Portland, OR 97205

San Jose Redevelopment Agency
50 West San Fernando Street, Suite 1100
San Jose, CA 95113

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AG

Department of Public Works

See Conditions of Approval

Other Departments and Agencies

Police Department – See Conditions of Approval

GENERAL CORRESPONDENCE

None Received

ANALYSIS AND RECOMMENDATIONS

PROJECT DESCRIPTION

The project site is located 170 South Market Street. The site is developed with a commercial building in the Commercial General (CG) and (DG) Ground Floor Retail Zoning Districts. The property owner is requesting a Conditional Use Permit (CUP) to allow operation of a restaurant, McCormick and Schmick, with entertainment and after-midnight use. McCormick and Schmick is a full service restaurant, the bar and entertainment would be entirely incidental to the restaurant use. The entertainment proposed will generally be light dinner music; however, the CUP would allow a DJ or live music for special events such as a New Years party. The primary use at the site is a restaurant and at no time would the restaurant be used as a nightclub.

The subject tenant space is located in the ground floor of the Fairmont Hotel. The proposed restaurant will occupy approximately 7,000 square-feet of tenant space. No exterior changes are being requested as a part of this CUP. The proposed hours of operation for the restaurant are 8:00 AM to 2:00 AM, daily, with live entertainment and alcohol service till 1:30AM. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as bars and nightclubs are encouraged to locate in the Core Area rather than in other less appropriate areas of the City as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

The project is also consistent with the *Strategy 2000* goals for the Downtown Core, in that the plan states that entertainment uses, restaurants, and late night activity can appropriately locate in the Downtown Core. The proposed bar and nightclub use will bring activity to the Downtown Core consistent with the *Strategy 2000* plan.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

ANALYSIS

Through the subject CUP, the applicant proposes to operate a restaurant, with entertainment, between the hours of 8:00 AM and 2:00 AM, daily. Such uses are subject to the City Council's 24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars and the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses, particularly bars and nightclubs, are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

Land Use Compatibility

The subject property is surrounded by commercial uses in all directions, except to the south where there is a high-rise apartment building. Each of the tenants has been notified of the pending application and hearing. McCormick and Schmick is a restaurant not a nightclub. Live music will be generally limited to special events. The residential units are not located immediately adjacent to the restaurant. The residential units are separated from the McCormick and Schmick restaurant by an existing mechanical room and the outer wall of the Fairmont Hotel. In addition, the proposed use must meet the requirements of the Noise Ordinance, which limits the amount of amplified noise heard at the property line. Any live entertainment or after-midnight use should not have an impact upon the residential units.

The proposed use, located in the Downtown Core, adjacent to other similar uses with similar hours of operation, is compatible with existing commercial land uses in the vicinity such as Gordon Biersch, the Hyatt, and the Marriott. Such entertainment and late night uses are anticipated by the *Strategy 2000* plan.

Parking

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs, such as McCormick & Schmick. The site, which is fully developed with the existing building, does not include any off-street parking specifically dedicated to the restaurant; however, nearby parking facilities (i.e., public garage, on-street parking) will be able to serve patrons and employees of the facility.

Public Outreach

Notice of the proposed project was circulated to properties within 300 feet of the subject property.

CONCLUSION

Based on the analysis above, staff believes that the proposed restaurant with live entertainment and after midnight use is consistent with the requirements of the Zoning Ordinance, General Plan, and City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. In addition, the conditions of approval (below) will help to ensure the project's operational compatibility within its surroundings

FACTS

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to operate a restaurant with after-midnight operations between the hours of 8:00 AM and 2:00 AM, daily. Alcohol service and live entertainment will cease at 1:30 AM, daily.
2. The project site is approximately 0.20-acres and is located in the Commercial General (CG) and Ground Floor Retail (DG) Zoning Districts.
3. A Conditional Use Permit is required for the operation of a restaurant with after-midnight use and entertainment in the CG Zoning District.
4. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram and is subject to the *Strategy 2000* plan for the Downtown Core.
5. The Core Area designation provides that restaurants and nightclubs may be located within the downtown Core Area provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
6. Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999, addressed the environmental impacts of this project.
7. The subject site is surrounded by a variety of commercial uses; residential uses are located within 500 feet of the project site.
8. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking, and entertainment establishments.
9. The project is consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars.

10. The project does not include any exterior changes to the structure.
11. An Entertainment Permit is not required by the Police Department is required for restaurants in hotels.

RECOMMENDATION

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) and Ground Floor Retail (DG) Zoning District in that the operation of a restaurant with entertainment and commercial use between the hours of 12:00 AM and 6:00 AM requires the approval of a Conditional Use Permit.
2. The project conforms to the San Jose 2020 General Plan in proposing the operation of a restaurant with entertainment and after-midnight use within the Downtown Core Area.
3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in proposing the operation of a restaurant with entertainment and after midnight use, in an area of downtown predominately developed with commercial land uses.
4. The project conforms to the California Environmental Quality Act since it does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

FINDINGS

Based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed restaurant with after-midnight hours and live entertainment are consistent with the uses of the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed restaurant will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report

entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to

meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.

2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Hours of Operation. The hours of operation for the restaurant will be limited to 8:00 AM to 2:00 AM, daily. With alcohol service and live entertainment ending at 1:30 AM.
4. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Noise emission shall comply with the standards identified in the Zoning Code.
5. Trash, Refuse, Garbage and Litter.
 - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, daily.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
6. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.

CONDITIONS SUBSEQUENT

1. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use presently conducted creates a nuisance.